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13

14 UNITED STATES DISTRICT COURT  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION  
17

18 CHAUNCI BOYKIN,

19 Plaintiff,

20 vs.

21 UNITED PARCEL SERVICE, INC.; and  
DOES I – X, inclusive,

22 Defendants.  
23

Case No. C-08-04870 MMC

**STIPULATED PROTECTIVE ORDER**

24  
25 **1. PURPOSES AND LIMITATIONS**

26 Disclosure and discovery activity in this action are likely to involve production of  
27 confidential, proprietary, and/or private information for which special protection from public  
28 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.

1 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
2 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
3 all disclosures or responses to discovery and that the protection it affords extends only to the  
4 limited information or items that are entitled under the applicable legal principles to treatment as  
5 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
6 Stipulated Protective Order creates no entitlement to file confidential information under seal;  
7 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards  
8 that will be applied when a party seeks permission from the court to file material under seal.

9 **2. DEFINITIONS**

10 2.1 Party: any party to this action, including all of its officers, directors,  
11 employees, consultants, retained experts, in house counsel, outside counsel (and their support  
12 staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless of  
14 the medium or manner generated, stored, or maintained (including, among other things,  
15 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
16 responses to discovery in this matter.

17 2.3 "Confidential" Information or Items: information (regardless of how  
18 generated, stored or maintained) or tangible things that qualify for protection under standards  
19 developed under F.R.C.P. 26(c).

20 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material  
21 from a Producing Party.

22 2.5 Producing Party: a Party or non-party that produces Disclosure or  
23 Discovery Material in this action.

24 2.6 Designating Party: a Party or non-party that designates information or  
25 items that it produces in disclosures or in responses to discovery as "Confidential."

26 2.7 Protected Material: any Disclosure or Discovery Material that is  
27 designated as "Confidential."  
28

2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.9 In House Counsel: attorneys who are employees of a Party.

2.10 Counsel (without qualifier): Outside Counsel and In House Counsel (as well as their support staffs).

2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its Counsel to serve as a expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

### 4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

### 5. DESIGNATING PROTECTED MATERIAL

#### 5.1 Exercise of Restraint and Care in Designating Material for Protection:

Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate

standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), may expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires.

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" on each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix "CONFIDENTIAL" on each page that

contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony. When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as "Confidential" does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. If material is appropriately designated as "Confidential" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

1           **6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2                   6.1     Timing of Challenges: Unless a prompt challenge to a Designating Party's  
3 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
4 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
5 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
6 promptly after the original designation is disclosed.

7                   6.2     Meet and Confer: A Party that elects to initiate a challenge to a  
8 Designating Party's confidentiality designation must do so in good faith and must begin the  
9 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
10 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must  
11 explain the basis for its belief that the confidentiality designation was not proper and must give  
12 the Designating Party an opportunity to review the designated material, to reconsider the  
13 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
14 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
15 has engaged in this meet and confer process first.

16                  6.3     Judicial Intervention: A Party that elects to press a challenge to a  
17 confidentiality designation after considering the justification offered by the Designating Party  
18 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
19 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the  
20 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
21 the movant has complied with the meet and confer requirements imposed in the preceding  
22 paragraph and that sets forth with specificity the justification for the confidentiality designation  
23 that was given by the Designating Party in the meet and confer dialogue.

24                  The burden of persuasion in any such challenge proceeding shall be on the Designating  
25 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
26 question the level of protection to which it is entitled under the Producing Party's designation.  
27  
28



1           7.     **ACCESS TO AND USE OF PROTECTED MATERIAL**

2                     7.1     Basic Principles: A Receiving Party may use Protected Material that is  
 3 disclosed or produced by another Party or by a non-party in connection with this case only for  
 4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
 5 disclosed only to the categories of persons and under the conditions described in this Order.  
 6 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
 7 section 11, below (FINAL DISPOSITION).

8                     Protected Material must be stored and maintained by a Receiving Party at a location and  
 9 in a secure manner that ensures that access is limited to the persons authorized under this Order.

10                    7.2     Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise  
 11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 12 disclose any information or item designated CONFIDENTIAL only to:

- 13                             (a)     the Receiving Party's Counsel;
- 14                             (b)     the officers, directors, and employees of the Receiving Party to  
 15 whom disclosure is reasonably necessary for this litigation;
- 16                             (c)     experts (as defined in this Order) of the Receiving Party to whom  
 17 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
 18 Bound by Protective Order" (Exhibit A);
- 19                             (d)     the Court and its personnel;
- 20                             (e)     court reporters, their staffs, and professional vendors to whom  
 21 disclosure is reasonably necessary for this litigation;
- 22                             (f)     during their depositions, witnesses in the action to whom disclosure  
 23 is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that  
 24 reveal Protected Material must be separately bound by the court reporter and may not be  
 25 disclosed to anyone except as permitted under this Stipulated Protective Order.
- 26                             (g)     the author of the document or the original source of the  
 27 information.

1           **8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
 2 **IN OTHER LITIGATION.**

3           If a Receiving Party is served with a subpoena or an order issued in other litigation that  
 4 would compel disclosure of any information or items designated in this action as  
 5 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax,  
 6 if possible) immediately and in no event more than three court days after receiving the subpoena  
 7 or order. Such notification must include a copy of the subpoena or court order.

8           The Receiving Party also must immediately inform in writing the Party who caused the  
 9 subpoena or order to issue in the other litigation that some or all the material covered by the  
 10 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
 11 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
 12 caused the subpoena or order to issue.

13           The purpose of imposing these duties is to alert the interested parties to the existence of  
 14 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
 15 protect its confidentiality interests in the court from which the subpoena or order issued. The  
 16 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
 17 confidential material – and nothing in these provisions should be construed as authorizing or  
 18 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

19           **9.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 21 Material to any person or in any circumstance not authorized under this Stipulated Protective  
 22 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
 23 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
 24 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
 25 this Order, and (d) request such person or persons to execute the “Acknowledgment and  
 26 Agreement to Be Bound” that is attached hereto as Exhibit A.

27           **10.    FILING PROTECTED MATERIAL**

28           In the event that a Receiving Party decides to submit material that a Producing Party has



1 designated "CONFIDENTIAL" to the Court for any purpose, the parties agree as follows: The  
2 submitting party will notify the Designating Party at least seven (7) calendar days prior to filing  
3 the pleading, motion, brief or declaration containing or disclosing the Confidential Information to  
4 the Court. The submitting party will specify what Confidential Information will be submitted to  
5 the Court so that the party to whom the information belongs may prepare the appropriate motion  
6 to have the record filed under seal. The parties will then coordinate the filing of the pleading,  
7 motion, brief or declaration so that the party to whom the Confidential Information belongs can  
8 simultaneously file the appropriate motion with the Court to have the record filed under seal in  
9 accordance with Northern District of California Local Rule of Court 79-5. The party filing the  
10 pleading, motion, brief, or declaration will lodge the Confidential Information with the Court in  
11 accordance with Northern District of California Local Rule of Court 79-5.

12 **11. FINAL DISPOSITION**

13 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
14 after the final termination of this action, each Receiving Party must return all Protected Material  
15 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
16 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
17 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
18 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
19 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
20 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
21 deadline that identifies (by category, where appropriate) all the Protected Material that was  
22 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
23 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
25 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
26 work product, even if such materials contain Protected Material. Any such archival copies that  
27 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
28 Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief: Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections: By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: December 30, 2008 PAUL, HASTINGS, JANOFSKY & WALKER LLP  
E. JEFFREY GRUBE  
MICHAEL M. PFYL

By: \_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL M. PFYL

Attorneys for Defendant  
UNITED PARCEL SERVICE, INC.

DATED: December 30, 2008 DICKSON – ROSS LLP

By: \_\_\_\_\_/s/\_\_\_\_\_  
KATHRYN BURKETT DICKSON

Attorneys for Plaintiff  
CHAUNCI M. BOYKIN

PURSUANT TO THIS STIPULATION, IT IS SO ORDERED.

DATED: January 5, 2009



HON. MAXINE M. CHESNEY  
UNITED STATES DISTRICT/MAGISTRATE JUDGE

# **Exhibit A**

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
 understand the Stipulated Protective Order that was issued by the United States District Court for  
 the Northern District of California on [date] in the case of *Boykin v. United Parcel Service, Inc.*,  
 Case No. C-08-04870. I agree to comply with and to be bound by all the terms of this Stipulated  
 Protective Order and I understand and acknowledge that failure to so comply could expose me to  
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
 any manner any information or item that is subject to this Stipulated Protective Order to any  
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number] as my  
 California agent for service of process in connection with this action or any proceedings related to  
 enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed. \_\_\_\_\_

Printed name. \_\_\_\_\_  
 [printed name]

Signature. \_\_\_\_\_  
 [signature]